

**JOURNAL**  
OF THE  
**House of Representatives**  
OF THE  
**REGULAR SESSION**  
OF THE  
**FORTY-FIRST LEGISLATURE**  
BEGUN AND HELD AT  
**THE CITY OF AUSTIN, JANUARY 8, 1929**



  
VON BOECKMANN-JONES CO.,  
AUSTIN, TEXAS.

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CONTEST CASES.

The Speaker laid before the House for consideration at this time the contest cases of W. R. Montgomery and W. S. Johnson.

Mr. Holder moved that the matter be referred to the Committee on Privileges, Suffrage and Elections.

Mr. Pope of Nueces moved as an amendment to the motion of Mr. Holder that the documents relating to the cases be not printed in the Journal at this time.

The motion of Mr. Pope of Nueces prevailed.

Question then recurring on the motion of Mr. Holder, it prevailed.

REPORT OF COMMITTEE ON PRIV-  
ILEGES, SUFFRAGE AND  
ELECTIONS.

The Speaker laid before the House for consideration at this time the following majority report:

## HOUSE JOURNAL.

253

Committee Room.

Austin, Texas, January 23, 1929.

Hon. W. S. Barron, Speaker of the House of Representatives.

Your Committee on Privileges, Suffrage and Elections, to whom was referred the matter of H. H. Wallace, contestant, versus A. S. Johnson, contestee, for the office of Representative for the Thirty-second Legislative District of the State of Texas, which contests are provided for in Article 3063 of the Revised Statutes of 1925, beg to advise that we have had the matter under consideration and do herewith make the following recommendations to the House:

Article 3059 of the Revised Statutes of 1925 provides as follows:

"If the contest be for the validity of an election for members of the Legislature, a copy of the notice, the statement, and the reply served upon the parties as required by this chapter shall, within twenty days after service thereof, be filed with the district returning officer to whom the returns of such election were made, who shall envelop the same together with a certified copy of the poll book or register of the votes of each precinct of the county returning to him in the said election and shall seal the said envelope and write his name across the seals and address the package to the President of the Senate or Speaker of the House of Representatives, as the case may be, to the care of the Secretary of State, and shall forward the same by mail, or other safe conveyance to the seat of government, so as to reach there if possible before the convening of the Legislature."

Our findings are that the contestant, H. H. Wallace, has failed to comply with the provisions of the statute just above quoted, in that, it is disclosed that the notice as provided by the law has never been served upon the contestee, A. S. Johnson. The statute appears to be mandatory, and the filing of such a notice is a condition precedent in our judgment to the vesting of jurisdiction in the House of Representatives in the matter; also we find that no certified copy of the poll book or register of the votes of each precinct and county returned to the returning officer is contained among the statement filed by the contestant. Both the contestant and contestee have appeared before this committee in person as well as by counsel and the committee has

very patiently listened to arguments on the above matters, which issues have been duly raised by the contestee in his "plea in abatement" filed herein, and after hearing the pleadings, statements and answers involved in the matter read and argument thereon, this committee is of the opinion that by reason of the contestant's failure to comply with the statute as above quoted, neither this committee nor the House has any jurisdiction to entertain the contest.

This committee therefore recommends to the House that the plea in abatement filed by the contestee be in all things sustained and that the contest be dismissed for want of jurisdiction.

Respectfully submitted,

SINKS, Chairman.

STOREY, Vice-Chairman.

YOUNG,

MANKIN,

MURPHY,

GRAVES of Williamson,

BOND,

BARNETT,

LEE,

SANDERS,

KELLER,

THOMPSON,

TURNER,

DUNLAP,

VEATCH,

WILLIAMS of Sabine.

Mr. Jenkins submitted the following minority report:

Committee Room,

Austin, Texas, January 22, 1929.

Hon. W. S. Barron, Speaker of the House of Representatives.

Sir: We, a minority of the Committee on Privileges, Suffrage and Elections, to whom was referred the contest of Hon. H. H. Wallace against Hon. A. S. Johnson, have had same under consideration and beg to report back with the recommendation that the House take the same into consideration and set a time for a trial thereof.

HARPER,

LOY,

POPE of Jones,

JENKINS,

SHELTON,

HAYS.

Mr. Barnett raised a point of order on further consideration of the minority report on the ground that certain members signing the minority report

were not present in the committee room when the report was made.

The Speaker overruled the point of order.

Mr. Sinks moved that the House adopt the majority report.

Mr. Jenkins moved as a substitute motion that the House adopt the minority report.

(Speaker in the chair.)

Mr. Kemble moved the previous question on the pending motions, and the main question was ordered.

Question first recurring on the motion by Mr. Jenkins, that the minority report be adopted, yeas and nays were demanded.

The motion was lost by the following vote:

Yeas—32.

Baker.	Kennedy.
Brice.	Kincaid.
Coltrin.	King.
Conway.	Lemens.
Cox of Lamar.	Loy.
Davis.	Mauritz.
DeWolfe.	Pope of Jones.
Ewing.	Reid.
Eickenroht.	Renfro.
Gilbert.	Shelton.
Giles.	Simmons.
Graves of Erath.	Smith.
Harper.	Snelgrove.
Holder.	Stephens.
Keeton.	Tarwater.
Kemble.	Waddell.

Nays—76.

Anderson.	Hogg.
Baldwin.	Hopkins.
Barnett.	Johnson
Beck.	of Dimmit.
Bond.	Johnson of Scurry.
Bounds.	Jones.
Bradley.	Justiss.
Chastain.	Keller.
Cox of Navarro.	Kinnear.
Cox of Limestone.	Land.
Dunlap.	Lee.
Duvall.	Long of Wichita.
Enderby.	Mankin.
Finn.	Martin.
Finlay.	Maynard.
Forbes.	McCombs.
Gerron.	McDonald.
Graves	McGill.
of Williamson.	Mehl.
Hardy.	Minor.
Harding.	Montgomery.
Harrison.	Moore.
Heaton.	Mosely.
Hefley.	Mullally.
Hines.	Murphy.

Negley.	Stevenson.
Nicholson.	Storey.
Pavlica.	Strong.
Petsch.	Turner.
Pool.	Van Zandt.
Pope of Nueces.	Veatch.
Prendergast.	Walters.
Richardson.	Warwick.
Rountree.	White.
Sanders.	Williams
Shaver.	of Sabine.
Sherrill.	Woodall.
Shipman.	Woodruff.
Sinks.	Young.
Speck.	

Present—Not Voting.

Albritton.	Palmer.
Brooks.	Ray.
Johnson of Smith.	

Absent.

Ackerman.	Patterson.
Adkins.	Purl.
Avis.	Quinn.
Bateman.	Reader.
Carpenter.	Thurmond.
Fuchs.	Tillotson.
Harman.	Wallace.
Jenkins.	Webb.
Kayton.	Wiggs.
McKean.	Williams
Olsen.	of Travis.
O'Neill.	

Absent—Excused.

Acker.	Morse.
Gates.	Rogers.
Hornaday.	Savage.
Hubbard.	Thompson.
Kenyon.	Westbrook.
Long of Houston.	Williams
Metcalfe.	of Hardin.

Question then recurring on the adoption of the motion by Mr. Sinks, yeas and nays were demanded.

The motion prevailed by the following vote:

Yeas—85.

Anderson.	Enderby.
Baldwin.	Finn.
Barnett.	Finlay.
Beck.	Forbes.
Bond.	Gerron.
Bounds.	Gilbert.
Bradley.	Graves
Chastain.	of Williamson.
Conway.	Hardy.
Cox of Navarro.	Harding.
Cox of Limestone.	Harrison.
Davis.	Heaton.
DeWolfe.	Hefley.
Dunlap.	Hines.
Duvall.	Hogg.

Holder.	Petsch.	Hornaday.	Rogers.
Hopkins.	Pool.	Hubbard.	Savage.
Johnson	Pope of Nueces.	Kenyon.	Thompson.
of Dimmit.	Reid.	Long of Houston.	Westbrook.
Johnson of Scurry.	Richardson.	Metcalf.	Williams
Jones.	Rountree.	Morse.	of Hardin.
Justiss.	Sanders.		
Keller.	Shaver.		
Kennedy.	Sherrill.		
Kincaid.	Shipman.		
Kinnear.	Sinks.		
Land.	Speck.		
Lee.	Stevenson.		
Long of Wichita.	Storey.		
Mankin.	Strong.		
Martin.	Turner.		
Maynard.	Var Zandt.		
McCombs.	Veatch.		
McDonald.	Wallace.		
McGill.	Walters.		
Mehl.	Warwick.		
Minor.	White.		
Montgomery.	Williams		
Moore.	of Sabine.		
Mosely.	Williams		
Mullally.	of Travis.		
Murphy.	Woodall.		
Negley.	Woodruff.		
Palmer.	Young.		
Pavlica.			

## Nays—19.

Baker.	Mauritz.
Coltrin.	Pope of Jones.
Cox of Lamar.	Renfro.
Eickenroht.	Shelton.
Giles.	Simmons.
Harper.	Smith.
Keeton.	Snelgrove.
Kemble.	Stephens.
Lemens.	Waddell.
Loy.	

## Present—Not Voting.

Albritton.	Johnson of Smith.
Brice.	Ray.
Brooks.	Tarwater.
Graves of Erath.	

## Absent.

Ackerman.	Nicholson.
Adkins.	Olsen.
Avis.	O'Neill.
Bateman.	Patterson.
Carpenter.	Prendergast.
Ewing.	Purl.
Fuchs.	Quinn.
Harman.	Reader.
Jenkins.	Thurmond.
Kayton.	Tillotson.
King.	Webb.
McKean.	Wiggs.

## Absent—Excused.

Acker.	Gates.
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